

CAPTAIN REX T. SHUPE  
DELVECCHIA vs FRONTIER AIRLINES

December 04, 2019

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1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEVADA

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4  
5 PETER DELVECCHIA, et al., )  
6 Plaintiff, ) Civil No.:  
7 v. ) 2:19-CV-01322-KJD-NJK  
8 FRONTIER AIRLINES, INC., )  
9 et al., )  
10 Defendants. )  
11  
12  
13

14 VIDEOTAPED DEPOSITION OF CAPTAIN REX SHUPE

15 Taken on December 4, 2109

16 at 8:29 a.m.

17  
18  
19 ADVANCED REPORTING SOLUTIONS  
20 159 West Broadway  
21 Broadway Lofts, Suite 100  
22 Salt Lake City, Utah 84101  
23

24 REPORTED BY: Michelle Mallonee, RPR, CSR  
25

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1 A. Yeah, I mean, she knew what was going on, yes. 08:52:03

2 Q. So she described a situation to you? 08:52:06

3 A. She described a situation. 08:52:08

4 Q. And what did she say about the situation? 08:52:09

5 A. Well, she says that, I haven't observed 08:52:11

6 anything. I didn't see it, I didn't -- you know, I'm not 08:52:13

7 privy to -- to what -- to the -- the situation. 08:52:16

8 Q. But it sounds from your other statement that she 08:52:20

9 concurred with the decision to separate the two? 08:52:24

10 A. Yes. 08:52:29

11 Q. Okay. But without any factual basis? 08:52:30

12 A. Well, you know, when -- when we talked to them, 08:52:33

13 I didn't ask them if they should be separated or not. 08:52:37

14 Q. Right. You're the captain. 08:52:40

15 A. Right. 08:52:42

16 Q. You make the decision. 08:52:42

17 A. Right. 08:52:44

18 Q. Right. So -- but you were obtaining facts from 08:52:44

19 them to help you with your decision? 08:52:47

20 A. Well, the situation was -- you know, was serious 08:52:50

21 enough to where I wanted, you know, input from all four. 08:52:54

22 Q. Okay. Now, at this point, you have received a 08:52:58

23 notification of something that might be inappropriate, 08:53:06

24 but it didn't come from the affected individual, correct? 08:53:10

25 A. You mean Delvecchia? 08:53:14

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1	Q. Yeah.	08:53:16
2	A. No.	08:53:17
3	Q. Well, and it didn't come from the child, right?	08:53:18
4	A. To me, no.	08:53:21
5	Q. No.	08:53:22
6	A. Directly, no.	08:53:23
7	Q. And -- and let me ask you: Do you, as -- as the	08:53:24
8	captain, do you know the names of the passengers in the	08:53:26
9	seats?	08:53:29
10	A. No.	08:53:29
11	Q. Okay. And I understand from Ms. Bright's	08:53:30
12	testimony that in 2017, the -- Frontier stopped providing	08:53:34
13	a -- a manifest with names?	08:53:39
14	A. I can't remember when they stopped or if they	08:53:42
15	stopped why they stopped, but we usually don't get names	08:53:45
16	in the cockpit. Every once in a while they'll slip us	08:53:49
17	one if they -- and I don't know why. Maybe they have an	08:53:53
18	extra copy or what it is. But it's not -- it's not usual	08:53:55
19	that we have the name of the passengers in the cockpit.	08:53:57
20	Q. Okay. So you didn't know that the adult and the	08:54:00
21	child had the same surname?	08:54:02
22	A. No.	08:54:04
23	Q. Okay. Now, again, there -- there hadn't been	08:54:04
24	any contact from the passenger, the young passenger or	08:54:12
25	even the adult passenger at this point, correct?	08:54:19

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1 A. Contact? 08:54:22

2 Q. I mean, they hadn't rung their bell, they hadn't 08:54:23

3 said something to a flight attendant, anything along 08:54:27

4 those lines? 08:54:29

5 A. I don't know. 08:54:31

6 Q. Okay. 08:54:32

7 A. I wouldn't know who -- when the passengers ring 08:54:32

8 the bell. We don't -- 08:54:34

9 Q. All right. 08:54:36

10 A. -- we don't know. 08:54:36

11 Q. But you, presumably, knew that the -- the child 08:54:37

12 had not complained to anyone about any inappropriate 08:54:43

13 touching? 08:54:47

14 A. I don't know if the child complained or not. 08:54:49

15 With all the information I'd received from the flight 08:54:52

16 attendants, I'd -- I -- it wasn't told me that the child 08:54:54

17 had complained. 08:54:58

18 Q. Okay. Now, after concluding the telephone or 08:54:59

19 intercom discussions with Bond and Nichol, what did you 08:55:03

20 do next? 08:55:08

21 A. Well, that's when we decided yes, let's separate 08:55:08

22 the two. 08:55:11

23 Q. And you say "we" decided. How -- how did 08:55:12

24 that -- I mean, you're the captain. 08:55:14

25 A. Well, sure. 08:55:16

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1 Q. So it's your decision. 08:55:16

2 A. The buck stops with me, right? 08:55:18

3 Q. Right. 08:55:19

4 A. Yeah. 08:55:19

5 Q. Right. But you -- you discussed it with all 08:55:20

6 four present? 08:55:22

7 A. Correct. 08:55:23

8 Q. Okay. And -- and I gather everybody agreed that 08:55:23

9 the right thing to do is -- is to separate the child from 08:55:29

10 the father? 08:55:32

11 A. Correct. 08:55:33

12 Q. All right. And again, you didn't know that it 08:55:34

13 was the father at this time? 08:55:36

14 A. I did not know. 08:55:38

15 Q. Okay. Now, I have had produced to me a page 08:55:39

16 from the flight attendant manual. 08:55:49

17 Do you -- do you receive the flight attendant 08:55:55

18 manual? 08:55:58

19 A. No. 08:55:59

20 Q. Okay. So what procedures, SOPs, or whatever 08:55:59

21 guides your decision making in a situation such as this, 08:56:08

22 especially one that you've never encountered before? 08:56:12

23 A. Well, I mean, we don't have a lot of guidance 08:56:15

24 when it comes to the -- the sexual -- this -- sexual in 08:56:18

25 nature or inappropriate touching in the back. 08:56:24

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1 We do have what we call "threat levels" in the 08:56:26  
2 back between the passengers. There's Threat Level 1, 08:56:28  
3 which is, you know -- and it escalates up to Threat Level 08:56:32  
4 4. 08:56:38

5 Q. Okay. Well, let's go through those, since you 08:56:38  
6 brought them up. 08:56:41

7 What is -- what defines Threat Level 1? 08:56:43

8 A. I believe Threat Level 1 is verbal 08:56:45  
9 noncompliance. 08:56:47

10 Q. So a passenger who verbally, meaning with words, 08:56:49  
11 is refusing to comply with -- 08:56:57

12 A. Comply with -- 08:57:00

13 Q. -- instructions from -- 08:57:00

14 A. -- instructions from the flight attendants, 08:57:02  
15 correct. 08:57:04

16 Q. Okay. We both have to talk -- 08:57:04

17 A. Sorry. Yes. 08:57:06

18 Q. -- at different times? 08:57:06

19 A. Yes. I'm sorry. 08:57:07

20 Q. Okay. So let's go through that again just so 08:57:07  
21 it's clear. 08:57:09

22 Threat Level 1, then, is a passenger who, using 08:57:10  
23 words, refuses to comply with an instruction from a crew 08:57:13  
24 member, correct? 08:57:18

25 A. Correct. 08:57:19

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1 Q. Okay. What is Threat Level 2? 08:57:19

2 A. Threat Level 2, I mean, I need to pull out my -- 08:57:21  
3 my FOM, my Flight Operations Manual, to get all the 08:57:24  
4 details. But that's when the escalation involves 08:57:30  
5 physical type -- pushing, hitting. 08:57:34

6 Q. Okay. All right. And is the FOM something that 08:57:37  
7 you have with you in the cockpit to refer to if this 08:57:42  
8 comes up? 08:57:45

9 A. Yes. 08:57:46

10 Q. Okay. Now, so Threat Level 2, then, is 08:57:46  
11 physical. 08:57:49

12 What's Threat Level 3? 08:57:50

13 A. Threat Level 3 is -- like I said, I have to take 08:57:53  
14 a look at it to see exactly, but that's where it's 08:57:57  
15 escalating to threats, physical harm -- 08:57:59

16 Q. Okay. 08:58:05

17 A. -- physical injury. 08:58:07

18 Q. Threats of physical harm or physical injury? 08:58:09

19 A. Yeah. 08:58:13

20 Q. Okay. And what is Threat Level 4? 08:58:13

21 A. That's attempted breach of the cockpit. 08:58:15  
22 Hijacking. 08:58:18

23 Q. Sure. 08:58:20

24 A. And like I said, there's a -- there's a list in 08:58:24  
25 there to -- to get all of the articulations that we would 08:58:27

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1 refer to. 08:58:32

2 Q. Okay. And when this information about Peter and 08:58:32  
3 A.D. was brought to your attention, did you consult the 08:58:38  
4 FOM? 08:58:42

5 A. I took a look at it, yeah. 08:58:43

6 Q. Okay. Did you go through the Threat Level 1, 2, 08:58:45  
7 3, and 4 designations? 08:58:48

8 A. When you say go -- 08:58:50

9 Q. Did you look at them? 08:58:51

10 A. Well, after the -- after the flight attendants 08:58:52  
11 departed the airplane -- I mean not the airplane, the 08:58:55  
12 cockpit, I took a look at the -- at the threat levels, 08:58:57  
13 yeah. 08:59:00

14 Q. Okay. Now, at that point you'd already made the 08:59:00  
15 decision to separate them? 08:59:02

16 A. Yes. 08:59:04

17 Q. Okay. But you then felt -- 08:59:04

18 A. Wanted to back that up just to make sure that -- 08:59:07

19 Q. Okay. 08:59:10

20 A. -- you know -- 08:59:10

21 Q. Okay. 08:59:10

22 A. -- we were where we should be. 08:59:10

23 Q. Now, you -- you started us down this road when 08:59:13  
24 you said we don't have a lot of guidance, and then you 08:59:17  
25 mentioned the threat levels. 08:59:20



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1 Is there any other guidance that you consulted 08:59:22  
2 in the FOM concerning this situation? 08:59:24

3 A. No. 08:59:26

4 Q. Okay. So let's just go through the threat 08:59:27  
5 levels. 08:59:32

6 You did not have any information that Peter or 08:59:32  
7 A.D. had verbally refused to comply with an instruction 08:59:39  
8 of a crew member? 08:59:43

9 A. Correct. 08:59:44

10 Q. You did not have any information that Peter or 08:59:45  
11 A.D. had caused any sort of physical altercation with a 08:59:51  
12 crew member? 08:59:56

13 A. Correct. 08:59:58

14 Q. You did not have any information that Peter or 08:59:58  
15 A.D. had threatened physical injury to a crew member? 09:00:02

16 A. Correct. 09:00:06

17 Q. And you did not have any information that Peter 09:00:07  
18 or A.D. had attempted a breach of the cockpit? 09:00:09

19 A. Correct. 09:00:13

20 Q. Okay. So nothing that was brought to your 09:00:13  
21 attention fit any of the threat levels? 09:00:16

22 A. Well, on Threat Level 2 is -- there is a 09:00:19  
23 section -- there is an articulation of inappropriate 09:00:22  
24 touching. 09:00:26

25 Q. Okay. So Threat Level 2, which I don't have 09:00:26

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1 available to me, and apparently you don't either at the 09:00:31  
2 moment, Threat Level 2, you say, has something in it 09:00:37  
3 about inappropriate touching? 09:00:43  
4 A. Correct. 09:00:46  
5 Q. All right. Now, can you tell me whether that is 09:00:46  
6 inappropriate touching of another passenger or 09:00:48  
7 inappropriate touching of a crew member? 09:00:51  
8 A. No, it doesn't -- I'd have to go read that to 09:00:56  
9 see the articulation again. 09:01:01  
10 Q. All right. Well, for our purposes today, did 09:01:04  
11 you determine that the information provided to you met 09:01:08  
12 Threat Level 2? 09:01:13  
13 A. Yes -- restate that question one more time. 09:01:17  
14 Q. Did you determine when you looked at the FOM and 09:01:22  
15 the threat levels that the information that the flight 09:01:26  
16 attendants had provided to you met the criteria of a 09:01:29  
17 Threat Level 2? 09:01:35  
18 A. Yes. 09:01:37  
19 Q. Okay. And what is the required action of the 09:01:38  
20 captain upon determining that a Threat Level 2 exists? 09:01:46  
21 A. There is an articulation in there that has us to 09:01:51  
22 restrain or subdue a passenger, contact dispatch, law 09:01:54  
23 enforcement requested. 09:02:02  
24 Q. Okay. So if -- if I understand you correctly, 09:02:08  
25 the required action of a captain upon determining that a 09:02:15

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1 passenger meets Threat Level 2 is, first, to restrain the 09:02:20  
2 passenger; second, to contact dispatch and request law 09:02:25  
3 enforcement officers meet the plane? 09:02:30

4 A. Correct. 09:02:33

5 Q. Okay. And you had determined that a Threat 09:02:34  
6 Level 2 existed with respect to Peter Delvecchia? 09:02:36

7 A. Correct. 09:02:42

8 Q. And you had determined this based on a statement 09:02:42  
9 by Scott Warren that he had seen Peter Delvecchia's hand 09:02:47  
10 near the groin of the child next to him? 09:02:54

11 A. Correct. 09:02:59

12 Q. Okay. Now, you did not restrain Peter 09:02:59  
13 Delvecchia, did you? 09:03:03

14 A. No. Not -- not physically restrain as far as 09:03:06  
15 with -- with the ties. What do we have, the -- anything 09:03:09  
16 like that. The restraint came -- to restrain was the 09:03:15  
17 separation. 09:03:18

18 Q. Well, under Threat Level 2 in the FOM, it says 09:03:19  
19 to restrain, correct? 09:03:24

20 A. Correct. 09:03:26

21 Q. And you have equipment on board the aircraft to 09:03:27  
22 restrain someone, correct? 09:03:30

23 A. Correct. 09:03:32

24 Q. But you did not restrain Peter Delvecchia with 09:03:32  
25 that equipment? 09:03:36

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1 A. Not with the -- the equipment. 09:03:36

2 Q. I see. 09:03:38

3 A. No. 09:03:39

4 Q. Okay. And, in fact, you left him seated next to 09:03:40

5 another passenger? 09:03:45

6 A. Able-bodied passenger, I assume. That's -- 09:03:47

7 Q. How did you assume that? 09:03:50

8 MS. SHELKE: I will object that I'm not sure 09:03:52

9 that Captain Shupe knows the names of the two plaintiffs. 09:03:55

10 If you'll refer to them as "the adult" and "the child." 09:03:59

11 MR. MCKAY: I'm sorry. Okay. That's -- that's 09:04:03

12 well-taken. All right. 09:04:04

13 Q. (BY MR. MCKAY:) So you -- you left the adult 09:04:07

14 seated next to another person, another passenger? 09:04:10

15 A. Well, the flight attendants set it up to where 09:04:15

16 I'm -- I'm not quite sure if there was a -- where the 09:04:17

17 able-bodied passenger was. 09:04:21

18 Q. Well, if -- if I represent to you that the 09:04:23

19 person seated next to the adult was the same person that 09:04:25

20 had been seated to [sic] him for the past two hours, that 09:04:29

21 would not be the same as finding an able-bodied passenger 09:04:34

22 to sit next to a restrained passenger, would it? 09:04:39

23 A. Restate that again. 09:04:44

24 Q. Did the flight attendants tell you anything at 09:04:46

25 all about the passenger seated next to Peter 09:04:54

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1	Delvecchia -- I mean the passenger that he did not board	09:04:56
2	with?	09:04:59
3	A. No.	09:04:59
4	Q. No. Nothing. You knew nothing. You didn't	09:05:00
5	know whether it was a -- a -- an 80-year-old woman or a	09:05:03
6	12-year-old girl, or a 350-pound man. You didn't know	09:05:08
7	anything, right?	09:05:15
8	A. Correct.	09:05:16
9	Q. Okay. So at this point, you have made a	09:05:16
10	determination of Threat Level 2. You have looked at the	09:05:21
11	FOM. It requires you to restrain the adult, correct?	09:05:25
12	A. Correct.	09:05:31
13	Q. And you did not.	09:05:32
14	A. Well, the restraint was the separation.	09:05:34
15	Q. Okay. If I get a copy of the FOM, is it going	09:05:36
16	to tell me that a separation is equivalent to restraining	09:05:40
17	a passenger?	09:05:47
18	A. In those words, no.	09:05:49
19	Q. No. So this is -- this is just something that	09:05:51
20	you've concluded that is not in the FOM?	09:05:53
21	A. Correct.	09:05:58
22	Q. All right. Sort of an equivalency determination	09:05:59
23	that you've made?	09:06:04
24	A. Correct.	09:06:05
25	Q. Okay. Now, if there's an emergency situation on	09:06:05

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1	the plane, you have checklists for that, correct?	09:06:08
2	A. Correct.	09:06:11
3	Q. Okay. And you would agree with me that standard	09:06:12
4	operating procedures require you to follow the checklist?	09:06:15
5	A. Correct.	09:06:19
6	Q. You don't get an opportunity to make equivalency	09:06:20
7	determinations on the checklist, do you?	09:06:25
8	A. Correct.	09:06:28
9	Q. Okay. But in this case, you -- you decided to,	09:06:28
10	even though this was something you'd never done before?	09:06:31
11	A. Correct.	09:06:36
12	Q. Okay. I'm assuming you determined that there	09:06:37
13	was no need to restrain the adult. Would that be a fair	09:06:40
14	statement?	09:06:47
15	A. Correct.	09:06:49
16	Q. Okay. But you did order that the child be	09:06:51
17	restrained in a sense?	09:06:58
18	A. Separated.	09:07:01
19	Q. Separated, which you just said was equivalent in	09:07:02
20	your mind to restraining?	09:07:05
21	A. Correct.	09:07:11
22	Q. Okay. So a 12-year-old boy is restrained on	09:07:12
23	your order because a flight attendant thought he saw	09:07:20
24	somebody touch the boy inappropriately?	09:07:26
25	A. Correct.	09:07:29